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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 STEVEN J. KRIER,

12 Petitioner,

13 v.

14 DAN PACHOLKE,

15 Respondent.

Case No. C08-5174RJB-KLS

ORDER DENYING CERTIFICATE
OF APPEALABILITY

16 This matter comes before the Court on the Petitioner's Notice of Appeal. Dkt. 13. The Court
17 must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. §
18 2253(c)(3). The Court has reviewed the record herein and is fully advised.

19 **I. PROCEDURAL HISTORY AND BACKGROUND**

20 On May 27, 2008, U.S. Magistrate Judge Karen L. Strombom issued a Report and
21 Recommendation, concluding that petitioner's habeas claims were unexhausted and that the petition should
22 be dismissed without prejudice. Dkt. 9. On June 24, 2008, the Court adopted the Report and
23 Recommendation and dismissed the petition without prejudice. Dkt. 11. Petitioner has now appealed to
24 the U.S. Court of Appeals for the Ninth Circuit. Dkt. 13.

25 **II. DISCUSSION**

26 **A. STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY**

27 The district court should grant an application for a Certificate of Appealability only if the petitioner
28 makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). To obtain a

1 Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that
2 reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different
3 manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v.*
4 *McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).
5 When the court denies a claim on procedural grounds, the petitioner must show that jurists of reason
6 would find it debatable whether the petition states a valid claim of the denial of a constitutional right and
7 that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.
8 *Slack* at 1604.

9 **B. CERTIFICATE OF APPEALABILITY**

10 This Court dismissed the petition as unexhausted, and so the matter was dismissed on procedural
11 grounds. Dkt. 11. There is nothing in the record that would support a conclusion that a jurist of reason
12 would find it debatable whether the petition states a valid claim of the denial of a constitutional right and
13 that jurist of reason would find it debatable whether this court was correct in its procedural ruling. *Slack* at
14 1604. The Certificate of Appealability should be denied.

15 **III. ORDER**

16 Accordingly, it is hereby **ORDERED** that Petitioner's Certificate of Appealability (Dkt. 13) is
17 **DENIED**.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
19 party appearing *pro se* at said party's last known address.

20 DATED this 8th of August, 2008.

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22 ROBERT J. BRYAN
23 United States District Judge
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